A

DATO' SABARIAH SABTU v. PEGUAM NEGARA & ORS AND OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
ZAKARIA SAM JCA
B KAMARDIN HASHIM JCA
[CRIMINAL APPEALS NO: A-09-332-11-2014, A-09-333-11-2014, A-09-324-11-2014, A-09-319-11-2014, A-09-320-11-2014, A-09-321-11-2014, A-09-322-11-2014, A-09-323-11-2014, A-09-325-11-2014, A-09-326-11-2014,
C A-09-327-11-2014, A-09-328-11-2014 A-09-329-11-2014, A-09-330-11-2014 & A-09-331-11-2014]
5 FEBRUARY 2016

D ***CRIMINAL LAW:*** *Anti-Money Laundering and Anti-Terrorism Financing Act 2001 – Section 4 – Illegal deposit-taking without valid licence – Bank and shares accounts seized – Company and directors discharged not amounting to acquittal – Claim by company for return of seized properties – Whether High Court has jurisdiction to hear application that was not anchored on any existing criminal suit or prosecution – Whether there was order of forfeiture by Public Prosecutor*

E The appellant was an investor in a gold programme operated by the third respondent. The second respondent had raided the third respondent's premise of business and seized various documents, gold and cash ('the properties'). Following an investigation under s. 4(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('AMLATFA') and
F s. 25(1) of the Banking and Financial Institutions Act 1989 ('BAFIA'), (i) the company was suspected of being involved in the activity of illegal deposit taking without a valid licence; and (ii) 15 bank accounts and 47 shares accounts in four securities companies were seized. The third respondent and its two directors were charged at the Sessions Court under ss. 4(1) and 25(1)
G of the AMLATFA and BAFIA but were discharged not amounting to an acquittal. When their enquiries to the Attorney General and the second respondent on the status of the frozen and seized properties were not responded to, the appellants commenced an action at the High Court against the respondents for the return of the properties. The third respondent raised
H a preliminary objection and contended that (i) the High Court had no jurisdiction to hear the application as it was not anchored on any existing criminal suit or prosecution; and (ii) as there was no order of forfeiture made by the Public Prosecutor pursuant to s. 56(3) of the AMLATFA within 12 months from the date of its seizure, the property was returned to the person from whom it was seized. In upholding the preliminary objection and
I dismissing applications, the High Court held that it had no jurisdiction to

hear the applications. Hence, the present appeals. The appellant submitted that the Judicial Commissioner ('JC') erred in failing to consider the inherent jurisdiction of the court and in failing to consider that the facts of the case were unique.

Held (dismissing appeals; affirming orders of High Court)
Per Tengku Maimun Tuan Mat JCA delivering the judgment of the court:

(1) The JC was correct in upholding the preliminary objection by the third respondent and consequently in dismissing the applications. In these appeals, the originating process was the criminal proceedings against the third respondent and the directors. When the criminal proceeding was disposed of, the cause of action was extinguished. The third respondent and its directors, having been discharged not amounting to an acquittal, and there being no intention on the part of the second respondent to recharge them, showed clearly that there was no criminal proceeding pending to enable the High Court in its criminal jurisdiction to make orders on the delivery of the seized properties. (paras 26 & 27)

(2) The appellants could file a civil suit against the third respondent for the recovery of the money invested in the gold programme. Therefore, there was no compelling reason to disturb the findings of the High Court. This was not an appropriate case to invoke the inherent jurisdiction of the court. There was no miscarriage of justice to the appellant by the dismissal of the application. The appellant obviously has a remedy against the third respondent by way of a civil suit. Furthermore, the relief sought was more suitably dealt with in a civil suit. (paras 31 & 32)

(3) The Public Prosecutor did not apply to forfeit the property. The properties were rightly returned to the third respondent. (para 35)

Bahasa Malaysia *Headnotes*

Perayu adalah pelabur dalam program emas responden ketiga. Responden kedua telah menggeledah premis perniagaan responden ketiga dan merampas pelbagai dokumen, emas dan wang tunai ('harta'). Berikutan satu siasatan di bawah s. 4(1) Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001 ('AMLATFA') dan s. 25(1) Akta Bank dan Institusi-Institusi Kewangan 1989 ('BAFIA'), (i) syarikat disyaki terlibat dalam aktiviti mengambil deposit secara haram tanpa lesen sah; dan (ii) 15 akaun bank dan 47 akaun saham dalam empat syarikat sekuriti disita. Responden ketiga dan dua orang pengarahnya dipertuduh di Mahkamah Sesyen di bawah ss. 4(1) AMLATFA dan 25(1) BAFIA tetapi dilepaskan tidak terjumlah kepada pembebasan. Apabila pertanyaan mereka kepada Peguam Negara dan responden kedua tentang harta yang disita dan dibekukan tidak dijawab, perayu-perayu memulakan tindakan di Mahkamah Tinggi terhadap responden-responden bagi pemulangan harta tersebut. Responden ketiga membangkitkan bantahan awalan dan menghujahkan bahawa (i) Mahkamah Tinggi tidak mempunyai bidang kuasa untuk

mendengar permohonan kerana ia tidak berlandaskan apa-apa guaman jenayah atau pendakwaan sedia ada; dan (ii) oleh kerana tiada perintah rampasan oleh Pendakwa Raya di bawah s. 56(3) AMLATFA dalam 12 bulan tarikh sitaan, harta tersebut dipulangkan kepada orang yang dari siapa dirampasnya. Dalam mengesahkan bantahan awalan dan menolak permohonan-permohonan, Mahkamah Tinggi memutuskan bahawa ia tiada bidang kuasa untuk mendengar permohonan-permohonan tersebut. Oleh itu, timbul rayuan-rayuan ini. Perayu menghujahkan bahawa Pesuruhjaya Kehakiman ('PK') terkhilaf akibat gagal mempertimbangkan bidang kuasa sedia ada mahkamah dan gagal mempertimbangkan bahawa fakta kes adalah unik.

Diputuskan (menolak rayuan-rayuan; mengesahkan perintah-perintah Mahkamah Tinggi)
Oleh Tengku Maimun Tuan Mat HMR menyampaikan penghakiman mahkamah:

(1) Pesuruhjaya Kehakiman bertindak betul dalam mengesahkan bantahan awalan responden ketiga dan menolak permohonan-permohonan. Dalam rayuan-rayuan ini, proses pemula adalah prosiding jenayah terhadap responden ketiga dan pengarah-pengarahnya. Apabila prosiding dilupuskan, kausa tindakan turut terlupus. Responden ketiga dan pengarah-pengarahnya dilepaskan tidak terjumlah kepada pembebasan dan memandangkan responden kedua tidak berniat mendakwa mereka semula, jelas tiada prosiding jenayah yang belum selesai untuk membolehkan Mahkamah Tinggi, dalam bidang kuasa jenayahnya, mengeluarkan perintah pemulangan harta yang disita.

(2) Perayu-perayu boleh memfailkan guaman sivil terhadap responden ketiga bagi pemulangan wang yang dilaburkan dalam program emas tersebut. Oleh itu, tiada alasan memaksa untuk mengganggu dapatan-dapatan Mahkamah Tinggi. Ini bukanlah kes yang sesuai untuk membangkitkan bidang kuasa sedia ada mahkamah. Tiada ketidakadilan yang berlaku kepada perayu berikutan penolakan permohonan. Perayu jelas mempunyai remedi terhadap responden ketiga melalui guaman sivil. Tambahan lagi, relief yang dipohon lebih sesuai dibicarakan dalam guaman sivil.

(3) Pendakwa Raya tidak memohon untuk merampas harta tersebut. Harta tersebut telah, dengan betul, dipulangkan kepada responden ketiga.

Case(s) referred to:
Abdul Rashid Maidin & Ors v. Lian Mong Yee [2008] 1 CLJ 1 CA ***(refd)***
Ahmad Zubair Hj Murshid v. PP [2014] 9 CLJ 289 FC ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2010] 7 CLJ 397 FC ***(refd)***
Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***
Siskina (Owners Of Cargo Lately Laden On Board v. Distos Compania Naviera SA [1979] AC 210 ***(refd)***
Sita Ram v. The State [1953] Cri LJ 1204 ***(refd)***

Legislation referred to:

Anti-Money Laundering and Anti-Terrorism Financing Act 2001, ss. 4(1), 45, 50(1), 51(1), 55, 56(3), 60(1), 61(2)
Banking and Financial Institutions Act 1989, ss. 25(1), 83(5)
Essential (Protection of Depositors) Regulations 1986, reg. 9(1)
Federal Constitution, art. 13(1)

[Editor's note: Appeal from High Court, Ipoh; Criminal Applications No: 44-11-04-2014, 44-12-04-2014, 44-13-04-2014, 44-14-04-2014, 44-15-04-2014, 44-16-04-2014, 44-17-04-2014, 44-18-04-2014, 44-19-04-2014, 44-20-04-2014, 44-21-04-2014, 44-23-04-2014, 44-24-04-2014, 44-28-04-2014 & 44-29-04-2015 (affirmed).]

For the appellant - Stanley Augustin; M/s Stanley Augustin & Co
For the 1st & 2nd respondents - Anselm Charles Fernandis; DPP
For the 3rd respondent - Muhammad Shafee Abdullah & Sarah Abishegam; M/s Shafee & Co

Reported by Najib Tamby

JUDGMENT

Tengku Maimun Tuan Mat JCA:

[1] There were 15 related appeals before us, arising from the decision of the learned Judicial Commissioner of the High Court at Ipoh in respect of 15 separate criminal applications filed by the appellants. The learned Judicial Commissioner had dismissed the applications upon a preliminary objection raised by the third respondent.

[2] Parties agreed that Appeal No. A-09-332-11-2014 (*Dato' Sabariah Sabtu v. Peguam Negara & Ors*) be the test case and the decision in this appeal will bind the other appeals.

Background

[3] The appellant was an investor in a gold programme operated by G-Gold Gallery Sdn Bhd (the third respondent).

[4] On 10 May 2006, Bank Negara Malaysia (the second respondent), in accordance with the powers conferred on them by the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA) and the Banking and Financial Institutions Act 1989 (BAFIA) raided the third respondent's premise of business and seized various documents, gold weighing 65.1 kg and RM100,000 in cash (the properties).

[5] The third respondent was investigated under s. 4(1) of the AMLATFA and s. 25(1) of the BAFIA as the company was suspected of being involved in the activity of illegal deposit taking without a valid licence.

[6] On 16 September 2006, 62 notices of seizure were issued by the Deputy Public Prosecutor (DPP) under s. 51(1) of the AMLATFA for the seizure of all the monies in all the financial institutions and all the shares of

A the third respondent and its directors. A total of 15 bank accounts amounting to RM8,481,984.16 and 47 shares accounts in four securities companies were seized.

[7] Sometime in June and August 2008, the third respondent and its two directors, namely Daniel Choong Yew Chee and Khoo Ban Sean Benny (the directors) were charged at the Kuala Lumpur Sessions Court for offences of illegal deposit taking and money laundering under s. 25(1) of the BAFIA and s. 4(1) of the AMLATFA, respectively. The case was later transferred to the Sessions Court at Ipoh.

[8] Before the trial proceeded, on the application of the DPP, the Ipoh Sessions Court made an order that the directors be discharged not amounting to an acquittal (order of DNAA). The notes of proceedings in the Sessions Court read:

MAHKAMAH TERBUKA

Tarikh	:	18 Mei 2011
Korum	:	Puan Julie Lack
P. Pendakwa:		Encik Hazril : TPR (Kes Amla and mention on behalf of TPR kes Bafia and Encik Badrul bersama Encik Amer - peguam)
Tertuduh	:	Kedua-dua OKT hadir.
TPR	:	telah diarah tentang representasi
Peguam	:	Pohon stand down untuk dapatkan arahan dari Dato' Shafie
Court	:	Stand down
		Recall.
		Pihak-pihak seperti tadi
		OKT 1 dan 2 hadir
Peguam	:	AG has agreed to the representasi.
TPR	:	Pohon kes di DNAA untuk semua pertuduhan dengan syarat

akujanji yang dipersetujui antara peguam dan pihak AG (pertuduhan di bawah Amla dan Bafia) undertaking yang dibuat oleh peguam OKT dan AG dilaksanakan.

Peguam	:	Saya sahkan
Court	:	Kes di DNAA semua pertuduhan.

[9] The undertaking referred to above was in relation to restitution by the third respondent to its investors.

[10] *Vide* a letter dated 21 February 2012, the second respondent wrote to the Dato Sri (Dr) Muhammad Shafee bin Abdullah, counsel for the third respondent as follows:

> Dato Sri,
>
> G-Gold Gallery Sdn Bhd. Restitution Plan
>
> We refer to the meeting chaired by the Attorney General, Y. Bhg. Tan Sri Gani Patail on 20th February 2012 on the above matter.
>
> 2. As agreed during the meeting, G-Gold Gallery Sdn Bhd (G-Gold) is to provide full restitution to all its investors. For this purpose, we attach herewith a list of G-Gold's investors for the period between 2003 and 2006 for G-Gold's further action, please. We reiterate that it is G-Gold's responsibility to determine the appropriate amount to be returned to the investors pursuant to the restitution plan to be approved by the Attorney General.

[11] By letters dated 18 July 2012 and 21 September 2012, the appellant wrote to the Attorney General and the second respondent, making enquiries on the status of the money that was frozen and seized. The appellant did not receive any reply to the said letters.

Proceedings In The High Court

[12] There being no response from the Attorney General and the second respondent, the appellant on 24 April 2014 filed a criminal application *vide* a notice of motion in the High Court Ipoh, seeking for the following orders:

(i) that the monies seized by the second respondent from financial institutions in the account of the third respondent and the properties seized from the third respondent by virtue of s. 50(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA) is illegally retained or held by the second respondent after 18 May 2011.

(ii) that the second respondent returns to the third respondent all the monies and properties seized by the second respondent;

(iii) that the third respondent holds the monies and properties seized by the second respondent in trust for the applicant;

(iv) that the third respondent returns the sum of RM207,172.09 to the applicant;

(v) alternatively all the monies seized from financial institutions in the account of the third respondent and monies and properties of the third respondent seized by virtue of s. 50(1) of the AMLATFA by the second respondent to be held in trust by the second respondent for the applicant and the second respondent forthwith refunds the sum of RM207,172.09 to the applicant;

(vi) cost of this application to be paid from the monies in the account of the third respondent's company held by the second respondent; and

(vii) any further or other orders deemed fit and proper by this Honourable Court.

[13] The application, as appeared in the intitulement of the notice of motion, was made under art. 13(1) of the Federal Constitution, s. 25(1) of the BAFIA, ss. 45, 50(1), 56(3) of the AMLATFA and reg. 9(1) of the Essential (Protection of Depositors) Regulations 1986, and the grounds of the application were:

> Pemohon adalah pelabur dalam Program Emas yang dikendalikan oleh Responden Ketiga dimana wang dan harta Responden Ketiga telah dirampas oleh Responden Kedua pada 10hb Mei 2006. Justeru itu, tiada sebarang permohonan dibuat kepada Hakim Mahkamah Tinggi untuk mendapatkan suatu perintah perlucuthakan harta yang dirampas dalam tempoh dua belas bulan dari tarikh penyitaan dan pembekuan tersebut. Sehingga kini tiada pendakwaan dimulakan terhadap sesiapa dan juga sabitan direkodkan terhadap sesiapa bagi kesalahan berkaitan dengan pengambilan deposit di bawah Akta Bank dan Institusi-Institusi Kewangan, 1989 (Akta 372), dan juga bagi suatu kesalahan di bawah Akta Anti-Penggubahan Wang Haram dan Anti Pembiayaan Keganasan 2001 (Akta 613).

[14] When the application came up before the High Court, learned DPP for the first and the second respondents proposed that the court make an order for the third respondent to hold the seized properties in trust for the eligible claimant as prayed for by the applicant in the notice of motion and for the court to appoint an administrator to determine who the eligible claimants are.

[15] The third respondent, on the other hand, raised a preliminary objection to the application. The objection was premised on the ground that the High Court was not seised with jurisdiction to hear the application as the application was not anchored on any existing criminal suit or prosecution. Further, the third respondent contended that as there had been no order of forfeiture made by the Public Prosecutor pursuant to s. 56(3) of the AMLATFA within 12 months from the date of its seizure, the property is returned to the person from whom it was seized.

[16] The learned Judicial Commissioner, in her grounds of judgment (appeal record vol. 1: pp. 46-75) had dealt with the issues raised by the respective parties whereupon she concluded that the court had no jurisdiction to hear the application and to make the orders prayed for by the appellant. The preliminary objection was thus upheld and the applications dismissed, hence the appeal.

The Appeal

[17] Learned counsel for the appellant canvassed only one ground of appeal, namely that the learned Judicial Commissioner erred in failing to consider the inherent jurisdiction of the court and in failing to consider that the facts of the case were unique.

[18] We do not wish to repeat the submissions advanced by the parties except to state the crux of their arguments.

[19] Insofar as the inherent jurisdiction was concerned, learned counsel for the appellant relied on *Karpal Singh & Anor v. PP* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544 and *Dato' Seri Anwar Ibrahim v. PP* [2010] 7 CLJ 397 on the principle that the court has the inherent jurisdiction to do the right, to undo the wrong and to prevent an injustice.

[20] As for the 'uniqueness' of the case, learned counsel submitted as follows. Had the prosecution of the third respondent and its directors proceeded, the Public Prosecutor at the end of the proceedings would have had to refer the properties seized to the High Court under s. 55 of the AMLATFA and the High Court would have caused to be published a notice in the *Gazette* calling upon any third party who claim to have any interest in the property to attend before the High Court to show cause why the properties should not be forfeited as per s. 61(2) of the AMLATFA. The second respondent had not carried out its statutory duty of referring to the High Court for the determination of the lawful ownership of the properties, which the appellant and others would have rightly laid claim to it. It was thus argued for the appellant that the second respondent had condoned the offence committed by the third respondent and the directors and that it was against the agreement of 18 May 2011 pursuant to which charges against them were withdrawn. The appellant prayed for the appeal to be allowed and the matter be remitted to the High Court for the application to be heard on the merits.

[21] For the second respondent, it was submitted that as there was no intention of recharging the third respondent company and the directors, the properties were no longer required for the purpose of any prosecution. Thus, in October 2015 (after the decision of the High Court and pending the appeal), the seized properties amounting to RM53,378,727.60 were returned to the third respondent company and its directors in accordance with s. 60(1) of the AMLATFA and s. 83(5) of the BAFIA.

[22] Learned counsel for the third respondent repeated his stand that the High Court was not seised with the jurisdiction to hear the application as there was no pending prosecution against the third respondent and the directors. The following authorities were cited in support of the submission:

(i) Sir John Woodroffe - *Commentary on Code of Criminal Procedure*, 1973;

(ii) Ratanlal & Dhirajlal CPC, 18th edn, (2006);

(iii) Section 452, *Sohoni's The Code of Criminal Code 1973*;

(iv) The *Siskina (Owners Of Cargo Lately Laden On Board v. Distos Compania Naviera SA* [1979] AC 210; and

(v) *Sita Ram v. The State* [1953] Cri LJ 1204

[23] It was further submitted for the third respondent that the High Court had no jurisdiction to hear the application as there has been no order of forfeiture made by the Public Prosecutor pursuant to s. 56(3) of the AMLATFA where if the forfeiture was not done within 12 months, the properties shall be released to the person from whom it was seized. Hence, the appellant had no right to bring this action at all and that the application should not see the light of day.

[24] Learned counsel had also highlighted the facts as deposed in the affidavit of the third respondent on the restitution made to the appellant in the form of transfer of shares, which we find no necessity to discuss in this judgment.

Our Decision

[25] The only issue for our consideration was whether the High Court erred in dismissing the application on the ground that it had no jurisdiction to deal with the same as there was no pending criminal proceeding before the court.

[26] Having considered the submission and the authorities, we were unanimous in our view that the learned Judicial Commissioner was correct in upholding the preliminary objection by the third respondent and consequently in dismissing the application.

[27] The principle of law is settled that a notice of motion cannot stand on its own (see *Ahmad Zubair Hj Murshid v. PP* [2014] 9 CLJ 289; [2014] 6 MLJ 831). A notice of motion, similar to a summons in chambers, is a subsidiary process which drew its life from the originating process (see *Abdul Rashid Maidin & Ors v. Lian Mong Yee* [2008] 1 CLJ 1; [2008] 1 MLJ 469). In the instant appeal, the originating process was the criminal proceeding against the third respondent and the directors. When the criminal proceeding was disposed of, the cause of action was extinguished. The third respondent company and the directors having been discharged not amounting to an acquittal and there being no intention on the part of the second respondent to recharge them, clearly there was no criminal proceeding pending to enable the High Court in its criminal jurisdiction to make orders on the delivery of the seized properties.

[28] Learned counsel for the appellant cited the case of *Karpal Singh (supra)*, to impress upon us that the High Court ought to have invoked its inherent jurisdiction to do justice to the appellant and to hear the application on the merits.

[29] In *Karpal Singh (supra)*, Abdul Hamid Omar LP said at p. 192 (CLJ); p. 549 (MLJ):

> ... Our considered opinion is that the English doctrine of inherent jurisdiction is hardly applicable in the subordinate courts but the High Court may invoke such prerogative powers in rare instances where it is right to do justice to the accused. ...

> In matters like criminal law of a purely domestic nature, our view is that the court will only exercise its inherent powers when there is miscarriage of justice. The court must be careful that the decision is not in conflict with the intention of the legislature as indicated in statutory powers. The inherent power apparently cannot be invoked to override an express provision of law or when there is another remedy available. ...

[30] In the course of the submission, we posed the question to learned counsel for the appellant as to whether the appellant could file a civil suit against the third respondent for the recovery of the money invested in the gold programme. Learned counsel answered in the affirmative.

[31] We therefore found no compelling reason to disturb the findings of the High Court. In view of the response of learned counsel to our query, this is not an appropriate case to invoke the inherent jurisdiction of the court. There is no miscarriage of justice to the appellant by the dismissal of the application. The appellant obviously has a remedy against the third respondent by way of a civil suit.

[32] Further, we noted that *vide* the first, the third and the fifth prayers in the notice of motion, the appellant was in effect, seeking for a declaration; the third and the fifth prayers pertained specifically to a declaration on trust. We were of the view that the relief sought for is more suitably dealt with in a civil suit. The fourth prayer where the appellant sought for the return of RM207,172.09 would require evidence to be led to prove the amount claimed. And in respect of the second prayer where the appellant sought for an order that the second respondent return the properties seized to the third defendant, we found that this prayer has become academic. The second respondent had, prior to the hearing of the appeal, returned all the monies to the third respondent.

[33] For completeness, we wish to set out the provisions relevant to the appeal in respect of the properties seized under AMLATFA and BAFIA. Sections 56, 60(1), 61 of the AMLATFA provide:

> Forfeiture Of Property Where There Is No Prosecution
>
> 56. (1) Subject to section 61, where in respect of any property frozen or seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of the freeze or seizure, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under subsection 4(1) or a terrorism financing offence, as the case be, or is a terrorist property.
>
> (2) The judge to whom an application is made under subsection (1) shall make an order for the forfeiture of the property if he is satisfied:

A (a) that the property is the subject matter of or was used in the commission of an offence under subsection 4(1) or a terrorism financing offence or is terrorist property; and

(b) that there is no purchaser in good faith for valuable consideration in respect of the property.

B (3) Any property that has been seized and in respect of which no application is made under subsection (1) shall, at the expiration of twelve months from the date of the seizure, be released to the person from whom it was seized.

(4) In determining whether or not the property has been obtained as a C result of or in connection with an offence under subsection 4(1) or a terrorism financing offence or is terrorist property, the court shall apply the standard of proof required in civil proceedings.

Release of property seized

60. (1) Where property has been seized under this Act, an investigating D officer other than the investigating officer who effected the seizure may at any time before it is forfeited under this Act, release such property to such person as he determines to be lawfully entitled to the property if he is satisfied that such property is not liable to forfeiture under this Act or otherwise required for the purpose of any proceedings under the Act, or for the purpose of any prosecution under any other law, and in such event E neither the officer effecting the seizure, nor the Federal Government, or any person acting on behalf of the Federal Government, shall be liable to any proceedings by any party if the seizure and release had been effected in good faith.

Bona fide third parties

F 61. (1) ...

(2) The court making the order of forfeiture under section 55 or the judge to whom an application is made under subsection 56(1) shall cause to be published a notice in the *Gazette* calling upon any third party who claims to have any interest in the property to attend before the court on the date G specified in the notice to show cause as to why the property shall not be forfeited.

[34] As for BAFIA, s. 83(5) states:

(5) An investigating officer shall, unless otherwise ordered by any court:

H (a) on the close of investigations or any proceedings arising therefrom; or

(b) with the prior written consent of any officer of the Bank authorised by the Governor to act on his behalf for this purpose, or of any investigating officer superior to him in rank, at any time before the I close of investigations, release any property, book or other document seized, detained or removed by him or other investigating officer, to such person as he determines to be lawfully entitled to the property, book or other document if he is satisfied that it is not

required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any written law.

[35] In the instant appeal, the Public Prosecutor did not apply to forfeit the property. As submitted by the respondents, the properties were thus rightly returned to the third respondent.

[36] Having regard to all the above, we were unanimous in our view that the appeal was devoid of any merit. We therefore dismissed the appeal and we affirmed the order of the High Court. It follows that the other appeals were similarly dismissed and the orders of the High Court affirmed.